

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21/07/2003

Coram

The Honourable Mr. Justice A.S.VENKATACHALAMOORTHY
and
The Honourable Mr. Justice S.SARDAR ZACKRIA HUSSAIN

C.A.No.90 of 2001

1. Surendran
2. Burma Ramesh
3. Babu @ Watch Babu ... Appellants

-Vs-

State rep.by
The Inspector of Police,
Vellore South Police Station,
(Crime No.1087 of 1994) ... Respondent

This criminal appeal is filed against the conviction and sentence imposed by the learned Additional Sessions Judge, Vellore by his judgment dated 29.12.2000 in S.C.No.5 of 1998.

!For Appellant No.1 : Mr.B.Sriramulu, Sr.Counsel
for Mr.M.Dhanabalakrishnan

For Appellants 2&3 : Mr.D.Doraisamy for
Mr.D.Rajagopal

^For Respondent : Mr.V.M.R.Rajendran
Addl.Public Prosecutor

:J U D G M E N T

A.S.VENKATACHALAMOORTHY, J.

The above three appellants/accused faced trial in S.C.No.5 of 1998 before the learned Additional Sessions Judge, Vellore. Charges 1, 2 and 5 under Sections 341, 364 and 324 respectively are against all the appellants/accused. Charge No.3 one under Section 302 I.P.C. is as against

A-1 and Charge NO.4 under Section 302 read with 34 I.P.C. is as against A-2 and A-3.

2. The prosecution has examined as many as 24 witnesses, marked Exs.P-1 to P-30 and produced Mos.1 to 15 in its endeavour to establish its case. The learned Sessions Judge found A-1 to A-3 guilty under Section 341 and 364 I.P.C. and sentenced them to undergo one month AND three years R.I. AND imposed a fine of Rs.2000/- each; A-1 was found guilty under Section 324 and 302 I.P.C. and sentenced to undergo six months R.I. AND Life imprisonment AND imposed a fine of Rs.5,000/-; A-2 and A-3 found guilty under Section 302 read with 34 I.P.C. and sentenced to undergo life imprisonment AND imposed a fine of Rs.5,000/-. The appellants/accused, in this appeal, question the correctness of the said judgment of the trial Court.

3. The case of the prosecution as disclosed from the evidence let in can be narrated as under:

(a) PW-1 Settu is the cousin brother of the deceased Shankar and they belong to a village called Nayakaneri. PW-2 Settu is also a relation to the deceased, who belongs to the village called Virupachipuram.

(b) On the date of occurrence, that was on 19.9.1994 night, PW-1 and the deceased went in a two-wheeler TVS 50 moped, to Vellore with an intention to witness a movie. The theatre was full by the time they reached and hence they could not get tickets. Thereafter, they went to the hotel of PW-8 Easwaran at 9.45 p.m. to take their dinner. By the time they come out, it was 10.00 p.m. The deceased started the two-wheeler and before he could proceed, all the three appellants/ accused and one Ramesh (who died subsequently) came near and switched off the moped. Then A-1 demanded from the deceased Shankar to pay mamool of Rs.5,000/- and for which the deceased replied that he is not having money and that he would pay him the next day. Then the accused asked the deceased and PW-1 to follow them. The deceased's two-wheeler was driven by accused Suresh, in which the deceased and PW-1 sat. In the other two-wheeler, the other three accused came. Then all of them proceeded to a mango thope near T.K.M.College.

(c) After reaching there also A-1 demanded the deceased to pay Rs.5,000/- and deceased expressed his inability to pay. All the four accused encircled the deceased and PW-1. A-1 beat the deceased with log on the right shoulder and left leg; A-2 and A-3 beat the deceased on the back. When PW-1 attempted to save the deceased, A-1 and another accused Ramesh beat him on his right hand elbow and right leg; the accused Ramesh beat on the right leg; and A-1 on the head. All the accused thereafter encircled the deceased and beat him and this episode went on nearly for half an hour. A-1 then cut the deceased with a knife on the back side of both the legs and on the back side of the head. The deceased fainted and fell down. The accused ran away leaving the logs, but however taking the knife with A-1.

(d) PW-1 then tried to take the deceased in his moped, but however, he could not. The deceased was then made to lie on the floor. PW-1 proceeded to a place called Paraimedu and informed PW-2 and again proceeded to Nayakaneri along with PW-3 and informed the mother of the deceased. Thereafter Pws.1 and 3 went to the hospital at Vellore when he came to know that the deceased had already been admitted there and in a dangerous condition.

(e) PW-15 Dr.Soundarrajan was at the relevant time working at Government Pentland Hospital, Vellore, when the injured Shankar was brought by PW-2 for injuries said to have been caused on 19.9.1994. The Doctor admitted the deceased in MS-II ward and gave him treatment. By the time he saw the injured Shankar, it was 2.30 a.m. on 20.9.1994. Ex.P-8 is the wound certificate issued by PW-15 Doctor. In the said certificate, the Doctor noted five injuries, out of which four are lacerations and one fracture on the left forearm.

(f) It was PW-15, the same Doctor, who treated PW-1 also at about 4.30 a.m. on 20.9.1994 and PW-1 was brought by PW-3. The Doctor found him conscious and well oriented. Ex.P-10 is the duplicate wound certificate issued by PW-15 with regard to PW-1.

(g) The deceased Shankar was then shifted to C.M.C. Hospital, where he died. Thereafter the deceased was brought back to the Government Pentland Hospital.

(h) PW-21 was the Head Constable at the relevant time attached to Vellore South Police Station. At about 3.00 a.m. on 20.9.1994, he received an intimation from the Government Pentland Hospital and immediately he proceeded there. He found that the deceased was unconscious and hence no statement was recorded from him. Subsequently at 5.30 a.m. he received another intimation about the admission of PW-1 and he went to the hospital again and recorded the statement of PW-1 between 5.40 and 6.20 a.m and obtained his signature therein. PW-21 came back to the police station and on the basis of the said complaint Ex.P-1, he registered crime No.1087 of 1994 under Section 302, 325 and 323 I.P.C. and prepared printed F.I.R. Ex.P-21. Ex.P-21 along with Ex.P-1 was sent to the Judicial Magistrate and copies to his superiors.

(i) PW-23 Inspector of Police was at the relevant time attached to Vellore North Police Station and was in additional charge of South Police Station as well. On 20.9.1994 at about 7.30 a.m., when he was in the North Police Station, received information by telephone and proceeded to the South Police Station and obtained copy of express F.I.R. Then he rushed to the Government Hospital along with the photographer and reached there at about 8.15 a.m. The Photographs of the body of the deceased was taken in different angles. He held inquest over the body of the deceased between 8.30 a.m and 11.30 a.m. in the presence of Panchayatdars and prepared Ex.P-26 inquest report. Thereafter, he examined witnesses and recorded their statements. The Investigating Officer then proceeded to the scene of occurrence and after inspecting the same, prepared Ex.P-2 Observation Mahazar and Ex.P-27 sketch in the presence of witnesses. At the scene of occurrence, he seized blood stained banian MO-7, blood stained Logs Mos.1 and 2, Ordinary log MO-3 and another log MO-4, blood stained earth MO-8 and ordinary earth MO-9 under Ex.P-3 Mahazar in the presence of witnesses. Then he formed a special squad to trace the accused. He sent necessary requisition to the Doctor to conduct post mortem.

(j) PW-16 Dr.Baskaran was, at the relevant time, working in Government Pentland Hospital, Vellore. Pursuant to the requisition Ex.P-12 received from the Inspector of Police, he commenced post mortem at about 3.45 p.m. on 20.9.1994. Ex.P-13 is the post mortem certificate issued by him. In the said certificate, the Doctor had noted various injuries so also what he found on internal examination. We extract the relevant portion from the said

certificate hereunder,

"External Injuries:

1. A lacerated wound 4 x 2 cm x bone depth fracture left leg.
2. A lacerated wound right leg 4 x 2 x bone depth
3. A lacerated wound left parietal bone 4 x 4 x bone depth.
4. Fracture forearm left contusion 4 x 4 cm.
5. A lacerated wound right upper arm 1 cm x 1 x 1 cm.

Internal Examination

Thorax

Fracture rib 3 to 6 right side with haemo thorax 300 M.L. with laceration of lung. Fracture rib 3 to 7 left side with haemo thorax 200 ml with laceration lung.

Abdomen: No haemo (n.c.). Stomach contained semi digested rice material.

Liver, spleen, kidney normal.

Skull: Sub apomeuratic haematoma left parieto occipital region with massive subdural haematoma left parieto occipital region.

Spine: Normal.

Hyoid Bone normal."

The Doctor had opined that the deceased would appear to have died of shock and haematoma and due to head injury to both lungs and death would have occurred 8 to 12 hours prior to post mortem. As PW-16, the Doctor testified before Court that the fracture of ribs on both sides and corresponding lungs could have been caused by beating on the said dead person with weapons like Mos.1 to 4.

(k) On 23.9.1994 evening at about 5.00 p.m. the Investigating Officer arrested A-3 near Bagayam bus stand. On arrest A-3 gave a voluntary confession statement and offered to produce the blood stained cloth and the admissible portion of the said statement is marked as Ex.P-6. The accused then took the police party and witnesses and produced Mo-12 full hand shirt and the same was seized under mahazar Ex.P-7 in the presence of witnesses. On 28.9.1994, at about 4.30 p.m. the accused Ramesh and A-1 were arrested near the foothill at Sivaramapuram. A-1 on arrest gave a voluntary confession statement and offered to produce the Scooter as well as knife. The admissible portion has been marked as Ex.P-28. At about 8.15 p.m. on 28.9.1994, A-1 took the police party and witnesses to his house and produced MO-5 Scooter TVJ 8404 and also MO-6 knife and the same were recovered under mahazar Ex.P-29. On 30.9.1994 at about 6.30 a.m. A-2 by name Ramesh @ Burma Ramesh was arrested in Shashtri Nagar in Swaminathapuram.

(l) The Investigating Officer then sent necessary requisition to the Court to send the material objects for necessary chemical analysis.

(m) PW-24 Inspector of Police succeeded PW-23 and continued the investigation. PW-24 examined witnesses including Doctors and recorded their statement. Ex.P-25 is the serologist's report. After completing investigation, PW-24 filed his final report on 29.12.1994.

4. When questioned under Section 313 of Code of Criminal Procedure, all the appellants/accused flatly denied having taken part in the commission of crime. According to them, they have been falsely implicated in the case and that they are innocent.

5. That the deceased died of homicidal violence is amply

clear from the medical evidence placed before the Court. The Doctor, who conducted post mortem has been examined as PW-16. The Doctor has deposed before the Court that pursuant to the requisition Ex.P-12 received from the Inspector of Police, did post mortem in the afternoon on 20.9.1994. The Doctor noted as many as five external injuries, out of which four are lacerated wounds. The Doctor has opined that the deceased would appear to have died of shock and haemotoma and due to head injury so also injuries to both legs and the death would have occurred about 8 to 12 hours prior to post mortem. The Doctor has further testified that the fracture of ribs on both sides and corresponding lungs could have been caused by beating on the said dead person with weapons like Mos.1 to 4 and that all the injuries are ante mortem. In the cross examination only one question was put to the Doctor to elicit that there was no injury on the spine and on the back of the deceased.

6. The case of the prosecution as spoken to by PW-1 is to the effect that the deceased is his cousin brother and on the fateful day, they went to Vellore in TVS 50 in the night with a view to witness a movie (second show) and by the time they reached the theatre, all the tickets were sold out and that thereafter they went to a hotel, had dinner and by the time they came out, it was 10.00 p.m. He has further testified that all the three appellants along with one Ramesh came there and A-1 demanded from the deceased a sum of Rs.5,000/- by way of mamool and for which the deceased replied that he has no money at that time and he would pay the same the next day. The further case is that the accused Suresh started the vehicle of the deceased and the deceased and PW-1 were asked to sit behind him. The appellants/ accused came in their two-wheeler. All of them went to a mango thope near T.K.M.College and after reaching there, again A-1 demanded Rs.5,000/- from the deceased and when the deceased expressed his inability, encircled both the deceased and PW-1 and the deceased was attacked by the accused with logs. When PW-1 went to prevent them, he was also attacked. After beating with log, the deceased was also attacked with knife on both sides of the neck so also on the head. The deceased fell down unconscious and the accused left the place leaving the logs, but however taking the knife. Thereafter, PW-1 tried to take the deceased in his two wheeler but he could not do so. Then he made the deceased lie down on the floor and went to Paraimedu and told PW-2 about the occurrence and thereafter went to Nayakaneri along with PW-3 to inform the mother of the deceased. After so informing, both of them went back to the hospital where the deceased was admitted and to PW-21 Head Constable, who came to the hospital, a complaint was given. The deceased, who was admitted already, died shortly thereafter. This in brief is the case of the prosecution.

7. Pws.2 and 3 have deposed before Court about PW-1 coming and informing them about the attack on the deceased as well as on himself at about 1.00 a.m. on 20.9.1994. While PW-2 would state that PW-1 had only told him that himself and deceased were beaten by four unknown persons, PW-3 has deposed that PW-1 had told him about the attack but he did not mention the name of the assailants. Pws.2 and 3 thus, have not supported the prosecution case and they have been treated as hostile witnesses. Among the material objects seized, only the cloths of the deceased and blood stained earth that was taken from the scene of occurrence were found to contain human blood 'A' group. Thus, in this case, the prosecution is left only with the evidence of PW-1, of course an injured witness. Now, the question for consideration is whether the prosecution has proved its case beyond all reasonable doubt.

8. Before we advert to the facts of the present case, we deem it necessary to refer to certain rulings of the Supreme Court which this Court has to keep in mind while considering the acceptability or otherwise of the testimony of PW-1.

(a) The Supreme Court of India in the ruling reported in 2002 SCC (Cr) 175 (Munshi Prasad and Others v. State of Bihar) has given a word of caution. That was an appeal filed by an accused, who was convicted by the High Court under Section 302 I.P.C. In the opening paragraph of the Judgment, Mr. Justice Umesh C. Banerjee speaking for the Bench, has observed as under,

"... Before advert to the contentions in support of the appeal, in the matter in issue, a note of caution shall have to be kept in mind, as has been administered by this Court from time to time, that scrutiny of evidence in a murder trial should be effected with more than ordinary care so as not to affect "dispassionate judicial scrutiny"."

(b) In 2000 SCC (Cr) 1416 (Hukam Singh v. State of Rajasthan) the Supreme Court has ruled that the testimonies of close relatives cannot be brushed aside on the sole ground that they are interested witnesses. But however, the testimony of an interested/related witness should be scrutinised more carefully and critically.

(c) Yet another legal position which we would like to refer to is the one laid down in 1995 SCC (Cr) 160 (Jagdish Prasad v. State of M.P.) where the Court ruled that as a general rule the Court can and may act on the testimony of a single witness though uncorroborated provided the testimony of that single witness is found to be entirely reliable and in such cases, there will be no legal impediment for recording a conviction. But however, if the evidence is open to doubt or suspicion, the Court will require sufficient corroboration. After so ruling, the Supreme Court referred to the ruling reported in AIR 19 57 SC 614 (Vadivelu Thevar v. State of Madras) and observed as under,

"... In this connection, reference may be made to a decision of this Court in Vadivelu Thevar v. State of Madras wherein this Court has classified the testimony of a witness into three categories viz., (1) wholly reliable (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable and observed that although in the first two categories of classification, there may not be any difficulty in coming to a conclusion either accepting or rejecting the testimony, it is in the third category of cases that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony either direct or circumstantial."

(d) The latest ruling reported in 2003 SCC (Cr) 544 (Lallu Manjhi v. State of Jharkhand) also affirms the principle laid down in Vadivelu Thevar's case (cited above).

(e) Relevant to mention the ruling reported in 2003 (3) Supreme 35 7 (Sadhu Ram & Ors. v. The State of Rajasthan) where the Supreme Court ruled that the Court can act on the solitary eye witness if the same infuses confidence without any corroboration. We quote hereunder the relevant portion from the said Judgment,

"It is no doubt true that the conviction of an accused can be based solely on the testimony of a solitary witness. However, in such a case the Court must be satisfied that implicit reliance can be placed on the testimony of such a witness and that his testimony is so free of blemish that it can be acted upon without insisting upon corroboration. The testimony of the witness must be one, which inspires confidence and leaves no doubt in the mind of the Court about the truthfulness of the witness."

9. Coming to the present case, according to PW-1, after the brutal attack by the accused, he tried to take the deceased in his twowheeler, but he could not succeed. Then he made the deceased to lie down on the floor and went and informed Pws.2 and 3 and an autorickshaw was arranged in which and the deceased was taken to the hospital by PW-2. PW-1 and 3 went and informed the mother of the deceased and that thereafter PW-1 went to the hospital along with PW-3.

At the hospital, PW-1 was treated by PW-15 Doctor at 4.30 a.m. as evident from Ex.P-10, the duplicate wound certificate issued to PW-1. A perusal of the same would further show that PW-1 was conscious and well oriented. The Doctor was informed that the assault was by four unknown male persons at 10.00 p.m. on 19.9.1994. The Doctor as PW-15 has also spoken that at 4.30 a.m. PW-1 himself informed him that the assault was by four unknown persons at the date and time mentioned in Ex.P-10.

PW-1 later on was examined at the hospital by PW-21 Head Constable attached to South Police Station, Vellore and a statement was recorded between 5.40 a.m. and 6.20 a.m., that is to say, about one hour after PW-15 Doctor treated him. The statement has been marked as Ex. P-1. In the said statement, he has mentioned the names of all the four accused. It is not known as to how PW-1 could mention the names of all the accused to PW-21, when just one hour before he had told the Doctor that the assault was by four unknown persons. In fact, when he was in the witness box, the learned counsel for the defence, showing A-3, called upon PW-1 to mention the name and PW-1 mentioned the name as Burma Ramesh, who in fact is A-2. Similarly, pointing out A-2, PW-1 mentioned the name as Babu, but in fact A-2's name is Burma Ramesh and not Babu. Further, in the cross examination, PW-1 has answered that he told the Doctor that he was beaten by only known persons. PW-15 Doctor attached to the Government Hospital, Vellore certainly could not have any reason or motive to mention wrongly. We also examined Ex.P-10 and we find the entire certificate had been written by the Doctor himself. Thus, there is material contradiction in the testimony of PW-1 himself as to whether he was attacked by known persons or unknown persons.

10. Ex.P-1 is the complaint given by PW-1 to PW-21 between 5.40 a.m and 6.20 a.m on 20.9.1994. In the said complaint, which is the earliest statement, PW-1 has mentioned clearly about the various overt acts by the accused. In the said complaint, he has stated that in the mango thope also A-1 asked the deceased to give money and the deceased expressed his inability to pay the money and thereupon A-1 threatened him with a knife. Further recital in Ex.P-1 is to the effect that each of the accused took sticks that were available on the ground and that A-1 beat the deceased on the right shoulder and on the right hand; Ramesh beat the deceased on the left shoulder and right hand; the other Ramesh and Babu beat the deceased on the

back and thereafter, all of them encircled and beat him indiscriminately. PW-1 went there to prevent the deceased, when the former was attacked on the left elbow, right hand, left shoulder and right side of the head. Finally, A-1 stabbed the deceased on the back side of the head and again cut the deceased on both the legs and the deceased fell down. Thus, according to PW-1, the accused apart from attacking the deceased with sticks all over the body, A-1 attacked the deceased thrice with knife.

The knife MO-6 was recovered pursuant to a confession made by A-1. The said weapon was seized under mahazar Ex.P-29 wherein the weapon has been described. As per the description, the total length of the knife is 56 cms. and the blade portion mentioned as 43 cms. The deceased was first seen by PW-15 Doctor and the original wound certificate has been marked as Ex.P-8. In the said certificate, it could be seen that the Doctor has noted four lacerated wounds and one fracture on the left forearm. The deceased died within few hours thereafter and the post mortem was done by PW-16 Doctor in the afternoon of 20.9.1994. Ex.P-13 is the original post mortem certificate. In the said certificate also the Doctor has noted only those five injuries. PW-15 Doctor in the cross examination has clearly stated that there was no injury on the back of the head. The Doctor has also denied the suggestion that injury No.3 could not have been caused by weapon like MO-6. The absence of cut injuries on the back of head so also on both the legs of the deceased, would belie the prosecution version that the deceased was attacked by A-1 with weapon like MO-6 knife. In fact, the two attesting witnesses, who have signed the recovery mahazar relating to MO-6, have turned hostile. Thus, the prosecution version relating to the overt acts by the accused does not seem to be acceptable.

11. The case of the prosecution is that first the deceased was taken to the hospital by PW-2 and others in an auto-rickshaw and they reached at 2.30 a.m. and Pws.1 and 3 went to inform the mother of the deceased and they could come to the hospital only at 4.30 a.m. This version of the prosecution does not appear to be true for the following reason. PW-9 is the Driver of the auto-rickshaw. Of course, he has turned hostile. But if we look at the cross examination by the State, a suggestion has been put to him that he told the Police at the time of investigation that he took both, the deceased and PW-1 to the hospital at the same time to the hospital. We cannot ignore this piece of evidence available before the Court. A serious suspicion arises in the mind of the Court and it is very likely that PW-1 and the deceased went to the hospital by 2.30 a.m. in the morning and that has been suppressed before the Court.

12. Ex.P-8 is the original wound certificate issued to the deceased by PW-15. The Doctor saw the deceased at 2.30 a.m. and he was semi-conscious at that time as could be seen from the certificate. In the said certificate it is mentioned as follows,
"... Accompanied by Settu 25/M for report at to certain injury said to have been caused on 20.9.1994 and alleged to have been seen with injury and delirious stage at 2.00 a.m. on 20.9.1994 mango field, college road, Sankaranpalayam, Vellore."

The deceased was taken to the hospital by Settu as could be noted from the certificate. PW-1 has clearly deposed in his cross examination that he

informed PW-2 Settu about the attack by the accused,

"bts;is (v) nrl;Ltplk; ngha; vjphpfs; 4 ngUk; r';fiu jhf;fpaij brhd; nd;;."

According to PW-1, it was only thereafter PW-2 went to the scene of occurrence and the deceased was taken to the hospital. If that is so, PW-1 would have only told the Doctor that he was attacked by four known persons. Ex.P-8 Wound certificate mentions, "Alleged to have been seen", which would suggest that nobody saw the attack on the deceased. Probably a doubt arises that it was only because of that in Ex.P-8 it is not mentioned as to whether the deceased was attacked by known persons or unknown persons. This is yet another doubt arises in the mind of the Court, for which we do not find any answer.

13. Coming to the remaining piece of evidence viz., the evidence of PW-7, we are considering it only to reject it. This witness has stated that at about 11.00 p.m. on the fateful day, when he was near the Ponniamman Koil, the accused were standing and talking to the effect that when the deceased was demanded money by A-1, he refused to pay and that he was cut. According to the prosecution, it was all the accused, who caused the murder of the deceased and when that being so, where is the question of their talking to each other. This court can understand that all the four of them told somebody else that they have finished off the deceased. This we have no hesitation to describe this witness as a total liar.

14. After a careful consideration of the entire evidence available on record, we are of the view that it would not be safe to rely on the testimony of PW-1.

15. In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellants/accused by the learned Additional Sessions Judge, Vellore by his Judgment dated 29.12.2000 in S.C.No.5 of 1998 are hereby set aside. The appellants/accused are acquitted of all the charges framed against them. The appellants/accused are directed to be set at liberty forthwith, if they are not required in connection with some other case.

vr

To

1. The Additional Sessions Judge, Vellore.
2. The Inspector of Police, South Police Station, Vellore (Crime No.1087 of 1994)
3. The Superintendent of Police, Vellore District.
4. The District Collector, Vellore.
5. The Superintendent of Central Prison, Vellore.
6. The Public Prosecutor, High Court, Madras.
7. The Director General of Police, Madras.

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